

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

HELEN K. HOUSTON,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	1:12-CV-4234-RWS
In re: Marine Houston, Estate No.	:	
2009-1811	:	
	:	

ORDER


This action was removed to this Court by Plaintiff Helen K. Houston from the Probate Court of DeKalb County. Plaintiff seeks to challenge the appointment of a guardian for Marine Houston. Plaintiff alleges that this Court has jurisdiction pursuant to 28 U.S.C. § 1443.

Under § 1443, a defendant may remove an action if it is brought “[a]gainst any person who is denied or cannot enforce in the courts of such States a right under any law providing for the equal civil rights of citizens of the United States or of all persons within the jurisdiction thereof.” 28 U.S.C. § 1443(1). “In Georgia v. Rachel, [384 U.S. 780 (1966),] the United States Supreme Court articulated the two-prong test which a removal petition filed pursuant to § 1443(1) must satisfy. First, the Petitioner must show that the right

upon which the petitioner relies arises under a federal law providing for a specific civil rights stated in terms of racial equality. Second, the Petitioner must show that he has been denied or cannot enforce that right in the state courts.” Alabama v. Connolly, 245 F.3d 1292, 1295 (11th Cir. 2001). Plaintiff has failed to meet either prong of the test. First, Plaintiff cites no federal law that provides for specific civil rights stated in terms of racial equality. Second, Plaintiff has failed to show that she is unable to enforce her rights in the state courts. The case is presently pending in the Probate Court of DeKalb County in which Plaintiff may assert her rights, along with the right of appeal in the event she receives an adverse ruling.

Based on the foregoing, the Court finds that it lacks subject matter jurisdiction of this action. Therefore, the case is hereby **REMANDED** to the Probate Court of DeKalb County.

SO ORDERED, this 1st day of April, 2013.


RICHARD W. STORY
United States District Judge